

EXHIBIT 1

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Case No. 18-CV-02458 (VB) (JCM)

5 - - - - -x

6 CARLOS FLORES, LAWRENCE BARTLEY,
7 DEMETRIUS BENNETT, L'MANI DELIMA,
8 EDGARDO LEBRON, ANTONIO ROMAN,
9 DONTAE QUINONES and SHAROD LOGAN,
10 on behalf of themselves and all
11 others similarly situated,
12 Plaintiffs,
13 -against-

14 Oct. 29, 2021
15 TANA AGOSTINI

16 TINA M. STANFORD, as Chairwoman of
17 the New York State Board of Parole;
18 WALTER W. SMITH, as Commissioner of
19 the New York State Board of Parole;
20 JOSEPH P. CRANGLE, as Commissioner of
21 the New York State Board of Parole;
22 ELLEN E. ALEXANDER, as Commissioner of
23 the New York State Board of Parole;
24 MARC COPPOLA, as Commissioner of
25 the New York State Board of Parole;
TANA AGOSTINI, as Commissioner of
the New York State Board of Parole;
CHARLES DAVIS, as Commissioner of
the New York State Board of Parole;
ERIK BERLINER, as Commissioner of
the New York State Board of Parole;
OTIS CRUSE, as Commissioner of
the New York State Board of Parole;
TYECE DRAKE, as Commissioner of
the New York State Board of Parole;
CARYNE DEMOSTHENES, as Commissioner of
the New York State Board of Parole;
MICHAEL CORLEY, as Commissioner of
the New York State Board of Parole;
CHANWOO LEE, as Commissioner of
the New York State Board of Parole;
SHEILA SAMUELS, as Commissioner of
the New York State Board of Parole;
ELSIE SEGARRA, as Commissioner of
the New York State Board of Parole;
and CARLTON MITCHELL, as Commissioner
of the New York State Board of Parole;
Defendants.

- - - - -x

October 29, 2021

9:46 a.m.

Video-recorded deposition of
TANA AGOSTINI, taken by attorneys for Plaintiffs
via Zoom, before Helen Mitchell, a Registered
Professional Reporter and Notary Public.

1 Agostini

2 think Kathryn is showing it on the
3 screen for ease. If she's scrolling
4 too fast, we can slow down for you.

5 THE WITNESS: No, it's fine. I
6 just think I did lose that exhibit
7 program; I don't know where it went.

8 MS. HERNANDEZ: Can we just go
9 off the record?

10 THE VIDEOGRAPHER: Going off
11 the record 10:07.

12 (Pause)

13 THE VIDEOGRAPHER: Back on
14 record 10:09 a.m., continuing on media
15 number one.

16 BY MS. HERNANDEZ:

17 Q So have you had a chance to
18 review Exhibits 1 and 2, Commissioner Agostini?

19 A Yes.

20 Q And do you recognize these
21 documents?

22 A Yes.

23 Q Did you receive these documents
24 when you were nominated to the Board of Parole?

25 A I think I got the Board of

1 Agostini

2 Parole Q and A when I was nominated.

3 Q And did someone walk you
4 through these or did you just read them on your
5 own in preparation for the Senate hearing?

6 A I honestly don't remember. It
7 was four and a half years ago.

8 Q Are these the type of documents
9 that once you became or were appointed to the
10 Board of Parole you would have referenced when
11 making parole decisions?

12 A Not so much.

13 Q I think you mentioned earlier
14 that once you were appointed you received
15 additional training. Is that correct?

16 A Yes.

17 Q Okay.
18 What type of training did you
19 receive after you were appointed?

20 A I received a variety of
21 trainings, from reviewing the language in 259-i,
22 medical parole statute. Those are the ones that
23 come off the top of my head.

24 We received training on...

25 Q With respect to the training

1 Agostini

2 you just mentioned regarding the Executive Law
3 259-i, were those trainings in person?

4 A Yes.

5 Q And who conducted those
6 trainings?

7 A Those trainings were generally
8 led by counsel's office, but we also had some
9 doctors come in for training with medical
10 parole, who were not from the agency.

11 Q And what were the doctors --
12 what topics were the doctors training you on?

13 A We spoke about the language
14 that is used in the Comprehensive Medical
15 Summary for medical conditions that incarcerated
16 people might be diagnosed with and have on their
17 conference of medical summaries that are in our
18 files, and to answer questions about what those
19 mean, make sure that we understood some of
20 the -- the medical terminology; to ambulate, if
21 somebody can ambulate or not, for example. So
22 we went through the different language that's
23 used in the Comprehensive Medical Summary.

24 Q Did any doctors speak on the
25 neurological development of the human brain?

1 Agostini

2 A Not that I recall, no.

3 Q Did any doctor speak about
4 childhood psychology?

5 A Not that I recall, no. That
6 particular training was about the Comprehensive
7 Medical Summary.

8 Q In your --

9 A We've had training with OMH
10 also.

11 Q And the training that you had
12 with OMH, did those cover the neurobiological
13 development of the human brain?

14 A I don't recall discussion about
15 the neurological development of the human brain.

16 Q What about childhood
17 psychology?

18 A I don't recall childhood
19 psychology.

20 Q In addition to the training
21 you've mentioned regarding the New York
22 Executive Law, did you also receive what I
23 believe is called the commissioner binder?

24 A We received a commissioner
25 binder maybe a couple years later. We didn't

1 Agostini

2 Q And did anyone walk you through
3 the materials that are listed in the index?

4 A I don't believe I was walked
5 through the materials that are in the index at
6 the time I was given the book.

7 Q Since the time you received the
8 book, have any of these sections been reviewed
9 with you or explained to you?

10 A Well, I don't believe since the
11 time of the book, but we had Sex Offender
12 Registration Act training prior to being given
13 the book. So many of the materials that we
14 received in the trainings are what is in this
15 book.

16 Q Okay. Are there -- if we look
17 at the index, are there any materials listed on
18 the index that you regularly refer to when
19 making parole decisions?

20 You said that, you know, you
21 take your binder with you or you keep it in the
22 office as a reference material. Are there any
23 materials listed on the index that you regularly
24 refer to when making parole decisions?

25 A Well, I use the regulation and

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2 I use the statute.

3 Q So those would be listed as 14
4 and 15 on the index?

5 A They are listed here. I just
6 look directly at the statute and at the
7 regulations. I don't use -- go to the book to
8 get them, I have them already. But, yes, they
9 are 14 and 15 here.

10 Q Okay.

11 If we look at the index, by 32
12 there's something that says, "COMPAS and Case
13 Plan." Do you refer to that when you're making
14 parole decisions?

15 A Not while I'm making the
16 decisions. We've already received the training
17 on it, so I don't refer to it for each decision,
18 go back to the book.

19 Q But if you have any questions
20 do you refer to it?

21 A If I have questions, I can
22 refer to it, or I can ask counsel's office for
23 guidance, I can go to the chairperson for
24 guidance, or I can ask for help if I feel like I
25 need help or have a question about the COMPAS or

1 Agostini

2 the case plan.

3 Q Do you often ask counsel for
4 guidance?

5 A I have at times asked for
6 guidance. I don't know about I would qualify it
7 as "often," but I've certainly asked.

8 Q There are other sections here,
9 33, which says "Minor Offenders," and 35, which
10 says "Board Interviews and Decisions." Are
11 those materials that you review in conjunction
12 with your work as the commissioner making parole
13 decisions?

14 A Yes, I review these in
15 conjunction with making decisions.

16 Q In fulfilling your duties as a
17 Board of Parole commissioner, do you try to
18 follow the advice that's set forth in these
19 materials?

20 A Yes.

21 Q And do you recall any instances
22 where you may have disagreed with any of the
23 advice that's set forth in these materials?

24 A I don't recall an instance
25 currently.

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2 Q How often -- I know that you
3 said that you've received training on how to
4 interpret the applicable law, specifically
5 259-i, when governing release decisions, but how
6 often do you receive training on how to -- of
7 the Executive Law and the regulations? Is that
8 something you just get once and done, or is it
9 periodically refreshed?

10 MR. HARBEN: Object to form.

11 You may answer.

12 THE WITNESS: I may answer?

13 MR. HARBEN: If you understand
14 the question.

15 A I believe that we have had the
16 opportunity for additional training; it isn't
17 only one time and that's it.

18 Q Is it your impression that at
19 these trainings counsel wants to make sure that
20 a consistent interpretation of the Executive Law
21 and the regulations is done by all
22 commissioners, or understood by all
23 commissioners?

24 MR. HARBEN: Object to the
25 extent this calls for any

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Agostini

A I like to -- I definitely like to hear what the judges have to say; I certainly find their opinions interesting. Some judges more so than others. You get to know some of their names as the years go on. So I do like to read what they have to say. If it was one of my cases and the judge found in favor of the petitioner, I certainly want to learn what happened. Maybe another case that I wasn't on but that I'm interested in. So I do read most of them.

Q And do you discuss them with
board counsel after you read them?

A Only if I have a question.

Q Okay.

And do you use these cases as guidance for your work as commissioner?

A I have, yes.

Q Since you said you like to read cases, I'm just -- are you familiar with the Hawkins case?

A Yes.

Q And how did you come to learn about the Hawkins case?

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Agostini

A I think from counsel at the Assembly. I think that decision occurred while I was still employed at the Assembly, and I learned of it in connection with my employment there, because we received decisions all the time.

Q And what is your understanding of what Hawkins requires of commissioners when they're rendering decisions of potential release?

A Well, essentially that we are considering that they were youthful, and what that means. So people who have committed offenses where they received a life sentence -- so Hawkins is for lifers under the age of 18 at the time of the offense -- and we consider the hallmark characteristics, such as their maturity at that time, their growth and maturity since that time of the offense, and other characteristics that they likely possessed at that time, not in possession of consequential thinking of what might happen as a result of their actions, that they are maybe more easily influenced by their peers or family pressures,

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2 for example, that they may be impulsive, more
3 impulsive as a youth than adults are.

4 And during the interviews I try
5 to get to know who that person was when they
6 were younger, and talk about their life growing
7 up, and where they were at the time of the
8 offense, where they were at school, where they
9 were emotionally, how things were with their
10 family, and try to get an understanding and a
11 picture of what was going on in their lives at
12 that point.

13 Q So you mentioned that your
14 initial understanding of what Hawkins
15 required -- the first time you heard about
16 Hawkins was while you were still at the
17 Assembly. Once you became a commissioner, did
18 you get additional training or guidance on how
19 you should consider the issues you just raised
20 about Hawkins?

21 A Yes. Yes, we did receive such
22 training.

23 Q And was that provided by
24 Miss Kiley?

25 A Yes, counsel's office; Kiley

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2 and her staff provided us the trainings.

3 Q And did that training in any
4 way change what you had already learned or
5 understood when you first heard about Hawkins at
6 the Assembly's office?

7 A Yes.

8 MR. HARBEN: Object to the
9 extent it calls for attorney-client
10 communications, but --

11 MS. HERNANDEZ: It was a yes or
12 no question, Jeb, but okay.

13 A Yes.

14 Q And do you follow the advice
15 that you received from board counsel's office to
16 the best of your ability when you're rendering
17 parole decisions?

18 A We do.

19 Q Do you recall if you've ever
20 disagreed with any of the advice related to the
21 Hawkins decision that's been provided to you by
22 the board's counsel's office?

23 A I don't recall disagreeing, no.

24 Q Do you recall receiving a memo
25 from board counsel in May 2018 regarding the

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2 Hawkins decision?

3 A I recall that we have
4 memorandum regarding the Hawkins decision. I
5 don't recall what we got it in May of 2018, if
6 it's the same memorandum.

7 Q Do you know if anything
8 happened in 2018 that would have required an
9 update to the memorandum? Because the Hawkins
10 decision came out in 2016. Do you know if there
11 was anything that would have caused -- for there
12 to be an updated memo to be provided to the
13 commissioners in 2018?

14 A The only thing I can think of
15 was the -- the Montgomery case, that there might
16 have been a U.S. Supreme Court decision, but I
17 don't remember if that was that year or not.

18 Q Earlier we were talking about
19 the commissioner binder and how you travel with
20 it and keep it in your office as a reference
21 point. Do you keep the Hawkins memo with you so
22 that you can refer back to it if necessary while
23 making your parole decisions?

24 A I actually do have it with me,
25 yes.

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2 forth in the Executive Law, but I'm sure you
3 know them since you worked on it as a -- as an
4 analyst in the Assembly, and then now as a
5 parole commissioner.

6 How do these factors of
7 diminished culpability of youth and growth and
8 maturity interact with the factors set forth in
9 the Executive Law?

10 MR. HARBEN: Object to the form
11 of the question, and specifically what
12 factors in the Executive Law you're
13 talking about.

14 MS. HERNANDEZ: The eight
15 factors set forth in 259-i(c)(A)(ii).

16 MR. HARBEN: Okay.

17 A Well, the institutional record,
18 the release plans, then there's a number of
19 elements in the factors that would illuminate
20 the maturity and growth since the time of the
21 offense. I don't think those are the only
22 ways -- they're definitely not the only ways to
23 measure somebody's, you know, maturity and
24 growth at the time of the offense, but we are
25 required to consider the factors.

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2 And you asked where do they
3 intersect. So I don't think, for example, that
4 having a deportation order necessarily has
5 any -- as an intersection would be
6 considerations for youth in the factors, but I
7 would say the factors that relate to the release
8 plans, the community resources and their
9 institutional record, performance, the
10 rehabilitative programs, their accomplishments.
11 So those two come to mind.

12 Q So if you determine that at the
13 time of the offense a juvenile lifer had the
14 hallmarks of youth, diminished culpability, and
15 also that the juvenile lifer has demonstrated
16 growth and maturity since the offense, are you
17 obligated to release them for parole?

18 MR. HARBEN: Object to the form
19 question.

20 You may answer.

21 A It does not mandate release,
22 no.

23 THE WITNESS: I am going to
24 need a restroom break soon.

25 MS. HERNANDEZ: We can take one

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2 now. That's fine.

3 THE WITNESS: Thank you.

4 MS. HERNANDEZ: Do you want to
5 say ten minutes?

6 THE WITNESS: That's fine.
7 Thank you.

8 MS. HERNANDEZ: No worries.

9 THE VIDEOGRAPHER: This
10 concludes media number one, going off
11 record 10:56 a.m.

12 (Recess taken)

13 THE VIDEOGRAPHER: We're back
14 on record 11:11 a.m. This marks the
15 beginning of media number two. Thank
16 you.

17 BY MS. HERNANDEZ:

18 Q Welcome back, Commissioner
19 Agostini.

20 I think earlier you mentioned
21 that you're familiar with the New York Executive
22 Law section 259-i; is that correct?

23 A Yes.

24 Q And is that the legal standard
25 that's applied when making parole decisions?

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2 determination of whether an individual is likely
3 to remain at liberty without violating the law?
4 What information in the parole materials do you
5 consider particularly relevant to this analysis?

6 A Their performance under
7 custody. Discipline would be one example.
8 Performance in the programs. What they say
9 during the interview, and what their behavior
10 was prior to the offense itself, their history.

11 Q You said that what they say
12 during the interview is relevant to your
13 analysis. What questions do you ask at the
14 interview to get at this issue?

15 A I think that their responses to
16 a variety of questions reveal -- are revealing
17 as to whether or not there is a likelihood that
18 they might reoffend in the same way or a
19 different way.

20 So, for example, if they
21 minimize the crime, if they are making excuses,
22 if they are trying to avoid responsibility and
23 hold other people responsible and it wasn't
24 them, I might think that they're lacking in some
25 level of insight or understanding of the bigger

1 Agostini

2 picture, how their actions impact others, at the
3 role that they did play, and so that lack of
4 insight or understanding could be concerning.

5 Q Did you receive any guidance on
6 how to determine risk of recidivism, or is it up
7 to your judgment?

8 A I think it's mostly up to my
9 judgment, based on the materials that I'm
10 provided and required to consider.

11 Q Is your opinion --

12 A It's not just a wild opinion
13 pulled out of thin air.

14 Q Is one of the pieces of
15 information you consider when applying the first
16 legal standard about the reasonable probability
17 of remaining at liberty without violating the
18 law the COMPAS report?

19 A It's one tool, yes.

20 Q Is disciplinary history while
21 incarcerated a factor that goes into your
22 analysis of the standard?

23 A That's another piece of it,
24 yes.

25 Q And that's because you think

1 Agostini

2 that generally, if somebody who had difficulty
3 following the rules inside prison would have
4 difficulty complying with the law once they
5 leave prison; is that right?

6 A It's certainly possible.

7 Q When looking at the
8 disciplinary history, do you weigh differently
9 disciplinary infractions committed shortly after
10 incarcerations versus closer to the date of the
11 hearing?

12 A Yes.

13 Q And is that true for juvenile
14 lifers as well?

15 A Yes.

16 Q Do you consider the
17 disciplinary infractions that happened shortly
18 after incarceration as a factor weighing against
19 release for juvenile offenders?

20 A If it were a serious
21 infraction, it could. Depends what it was and
22 how long ago it was. But generally I consider
23 more recent discipline rather than the very
24 first discipline when they first got here and
25 were still quite young. But it depends what it

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2 some facts and less time on others. Each
3 factor, most of them have several elements in
4 them.

5 Q In the cases of juvenile
6 lifers, are there some factors that are more
7 important or more helpful in making your
8 decisions with respect to parole to juvenile
9 lifers?

10 A I think their release plans are
11 very important. I think their accomplishments,
12 their growth, what they've done, what they've
13 achieved, all speaks to their growth and
14 maturity, how they've utilized their time. So
15 those factors are particularly important.

16 They are all important, I will
17 consider every one of them. Most juvenile
18 lifers will not have been in a temporary release
19 program.

20 Q As a parole board commissioner,
21 do you have a discretion to consider other
22 factors than the ones listed here?

23 A Yes.

24 Q And what are some of the
25 factors beyond this list that you can consider

1 Agostini

2 when making your parole decisions?

3 A Remorse, for example. Insight.

4 Q And is it ever appropriate to
5 deny release based on just one of these factors?

6 A Yes.

7 Q And what about the inverse, is
8 it ever appropriate to grant release based on
9 one of these factors?

10 A Well, release has to be granted
11 if you meet the standards, so meeting any one
12 factor alone does not necessarily mean that
13 you've met all three factors if, for example,
14 you have a life sentence.

15 Q Okay, let's look at factor
16 number five, "Any current or prior statement
17 made to the board by the crime victim or the
18 victim's representative."

19 Do you see that?

20 A (Nodding)

21 Q Why is this factor relevant to
22 determining whether or not individuals should be
23 released on parole?

24 A Well, if it's in the law, that
25 would be one reason why it's relevant; we must

1 Agostini

2 consider that.

3 Q What standard does it go to?

4 A What standard does factor
5 number five go to?

6 Q Um-hum.

7 A I think it can speak to the
8 second and third standard.

9 Q Is it ever appropriate to deny
10 parole based solely on the fact that the victim
11 opposes release?

12 A It could be.

13 Q In what circumstances?

14 A In what circumstances would it
15 be appropriate to deny somebody's release based
16 on --

17 Q Solely on the fact that there's
18 victim opposition.

19 A We might find the statements
20 provided by the victim to be compelling and
21 persuasive that the person's release at this
22 time might not be compatible with the welfare of
23 society or might deprecate the offense so as to
24 undermine respect for the law.

25 Q But you would agree with me

1 Agostini

2 that whether or not the victim made a statement
3 to the board does not bear on whether the parole
4 applicant has been rehabilitated, meaning has no
5 disciplinary record or low COMPAS score or has
6 achieved educational and vocational
7 accomplishments?

8 MR. HARBEN: Object to form.

9 A I would agree that the
10 statements of victims don't necessarily have
11 bearing on the rehabilitation of the person. I
12 think that's what you said. And if it is, I
13 would agree with you.

14 Q It's possible that the victim
15 or the victim representative may not have spoken
16 or been -- even been in the same room as the
17 inmate, the parole inmate, since the sentencing;
18 correct?

19 A Correct.

20 Q Is that something you take into
21 account when reviewing victim opposition?

22 A Yes. Not all victim statements
23 are opposition, just so you know, but we --
24 definitely, I think more often than not, they
25 have not seen or spoken to the incarcerated

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2 person since sentencing, or since the offense.

3 Q So let's move on to factor
4 number seven, "The seriousness of the offense
5 with due consideration to the type of sentence,
6 the length of the sentence, and recommendations
7 of the sentencing court, the district attorney,
8 the attorney for the inmate, the pre-sentence
9 probation report, as well as consideration of
10 any mitigating and aggravating factors and
11 activities following arrest prior to
12 confinement." Let's break those out a little
13 bit.

14 A Okay.

15 Q Is this the same assessment of
16 seriousness as under the deprecate standard, or
17 something different?

18 (Court reporter clarification)

19 A I don't know, I would have to
20 think about that. Is the seriousness of the
21 crime -- can you say the question again?

22 Q So factor seven refers to the
23 seriousness of the offense, and lists a bunch of
24 things you have to consider with respect to
25 seriousness of the offense. And I'm wondering

1 Agostini

2 whether you conduct the same assessment of
3 seriousness here as you do under the deprecate
4 standard, where you're taking into account the
5 seriousness of the crime, that it would under --
6 deprecate and undermine the law.

7 A Well, I think that factor
8 seven, all the factors in general, inform the
9 standards, so they do all intersect in that way.

10 Q So you do conduct the same
11 assessment of seriousness with respect to this
12 factor as you do with respect to the deprecate
13 standard?

14 A I'm trying to understand what
15 you're thinking. I'm trying to understand that.
16 I mean, if it's -- if it's the one offense, it
17 is the same offense that we are considering,
18 so -- yes, I guess the answer is yes.

19 Q I guess -- does "seriousness"
20 take on different meanings whether you're
21 looking at the standard or you're looking at
22 this factor?

23 A I suppose it could take on
24 different meanings.

25 Q In what sense?

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2 A Yes. It would also go to the
3 first one and the second one.

4 Q Okay.

5 A There's also, I believe, in
6 factor seven, the person's history.

7 So, for example, we have people
8 who may be in for a burglary or a robbery, and
9 if I'm considering the specific characteristics
10 of this offense that they're in for, but we may
11 also consider the fact that it is their sixth
12 burglary or robbery. So there is -- the pattern
13 and the history, which I think is also part of
14 factor number seven, we consider that as well
15 when we are trying to determine whether or not
16 this person's release would be compatible with
17 the welfare of society or if it would tend to
18 deprecate the offense so as to undermine respect
19 for the law. So that's kind sort of a
20 general -- I think that's what I mean in
21 general; that if you have somebody who has a
22 pattern of behavior, such as multiple robberies,
23 multiple burglaries, multiple rapes, something
24 like that, that is something that we consider
25 with the standard, and that may be different

1 Agostini

2 than just the specific, this one case that we're
3 talking about now.

4 Q Okay.

5 An inmate cannot be
6 automatically denied for parole based on the
7 seriousness of their crime; correct?

8 A Well, there's nothing automatic
9 about the process or the decision making, but
10 they can be denied based on the seriousness of
11 the offense.

12 Q Well, I guess I wasn't
13 specific.

14 Can an inmate be denied parole
15 only on the basis of their crime, the nature of
16 their crime alone?

17 A If the nature of that -- if the
18 nature of that crime and consideration
19 surrounding it result in him or her not meeting
20 one of those standards, then, yes.

21 Q Is the same true for juvenile
22 lifers?

23 A I think it's possible that it
24 can be. But we really make -- we make decisions
25 based on each case. And this is like a real

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2 generalized question, is it ever possible. So
3 I'm imagining that, yes, it is possible, but we
4 make the decision based on the individual case,
5 the individual person, individual circumstances.
6 I mean, that's what we're trying to understand,
7 exactly, you know, what happened, who were you
8 then, who are you now, who might you be in your
9 future, what are you planning. So the decision
10 is based on the individual case. But is it
11 possible that a juvenile lifer could be denied
12 based on the seriousness of the offense, that
13 that offense would -- would come -- you know,
14 result in a conclusion that they don't meet one
15 of the standards? I mean, I think that's
16 possible.

17 Q Generally, how heavily do you
18 weigh the nature of the crime when you're
19 assessing the standards?

20 MR. HARBEN: Sorry, that broke
21 up, I couldn't hear it.

22 MS. HERNANDEZ: I said, "How
23 heavily do you weigh the nature of the
24 crime when you're assessing the
25 standards."

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A I think it's different in different cases. The more serious the crime, the more heavily it may be weighed; the more years that have past, the less heavily it might be weighed. So I think there are variables.

Q Let's look at recommendations of the sentencing court. Why would that be relevant to determining whether or not an individual should be released on parole?

A It is relevant because the parties at the sentencing hearing have a lot of information that was current at that time, and there can be things that are said at sentencing that are illuminating, that are helpful, that are not helpful.

It may be the intent of the judge that the person get out at their earliest opportunity, it may be the intent of the judge that the person never get out.

The incarcerated person, him or herself, might have spoken at sentencing, might have spoken very sincerely and in depth, made remarks to the court, to the families. They may not have. They may have cursed out the judge

1 Agostini

2 and spoken profanely at sentencing.

3 There can be mitigating factors
4 that their attorney brings up and points out.
5 There might have been an error in the
6 pre-sentence report that their attorney brings
7 up, points out, asks for it to be struck.

8 So there can be a lot of
9 information about activity after arrest, before
10 sentencing that will turn into incarceration,
11 that were provided to the person that they
12 didn't succeed in and that results in the
13 sentence. So there can -- there can be a lot
14 gleaned from the sentencing minutes; some
15 helpful, some not helpful; some favorable, some
16 not favorable.

17 Q But it would be fair to say
18 that the sentencing court would not be in a
19 position to assess whether the parole applicant
20 has been rehabilitated after the sentencing;
21 right?

22 A Totally agree with you.

23 Q So let's look at the
24 recommendations of the district attorney.

25 Can you explain to me why this

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2 the discipline to see that it's a lot of
3 Tier IIs for smoking and sleeping through the
4 count versus a lot of Tier IIIs for violent
5 conduct and assault, you know, on inmate or
6 staff, so it will still have the same high score
7 or low score, but you've got to look in the --
8 in the record to see what it's referring to, and
9 then ask about it, what happened.

10 Q Okay, let's look at one last
11 entry. If we see "Reentry substance abuse," it
12 says "9, highly probable."

13 Is this something that can be
14 addressed through a parole case plan?

15 A It can.

16 Q So would this be a reason to
17 deny parole, a high score for reentry substance
18 abuse?

19 A It can. And I don't think the
20 issue is so much the score. If the person is
21 getting high regularly and recently in prison,
22 that alone can be sufficient to raise concern
23 about whether or not there's a reasonable
24 probability they're going to remain at liberty
25 without once again violating the law. I don't

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2 need the score on the COMPAS to generate that
3 concern or justify the concern.

4 Having said that, somebody can
5 have a high score and they can be in for years
6 and have no tickets for substance use or
7 possession or alcohol intoxicating, and then I would
8 disagree with the high score. If I don't see
9 anything in the record, then I don't know why
10 they necessarily have a high score. Just
11 because they used years ago doesn't mean they'll
12 use again. So I have to look in the record for
13 more information. But certainly people can have
14 treatment in the community.

15 Q Do you look at COMPAS scores
16 for each parole applicant who you make a parole
17 decision for?

18 A Yes.

19 Q We've talked about the
20 regulations, the law, the COMPAS reports, but I
21 actually haven't asked you yet about what your
22 actual week looks like.

23 Can you tell me a little bit
24 about what your week looks like in terms of your
25 work?

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2 A Absolutely.

3 So Mondays I come to the
4 office; I work in the Albany office. And if the
5 panel I'm going to work on is in the Albany
6 office, and I'm here all day -- the files, since
7 the pandemic, arrive on Mondays -- and then I
8 start going through everything once they get
9 here, once they're delivered.

10 Tuesdays and Wednesdays tend to
11 be the interview days.

12 If I'm not assigned to Albany,
13 if I'm working out in Buffalo or Syracuse or
14 some other place, I leave the office in the
15 afternoon and begin going to wherever it is that
16 I'm going.

17 I try to get to whatever office
18 it is on Mondays and start looking at my files
19 on Mondays. So I do like to do that. So
20 usually they come in the early afternoon, and --
21 the only place I don't get to usually by early
22 afternoon is Buffalo, it's the longest drive,
23 but do I get to the Buffalo office on Mondays.

24 So Mondays, look at files,
25 drive to whatever place or stay here. Tuesdays

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2 Q Okay.

3 On the same page, line 17 to
4 the next page, 4, you discuss Mr. Brown's risk
5 assessment score.

6 Is this COMPAS?

7 A Yes.

8 Q Does COMPAS matter more, less
9 or the same for juvenile lifers?

10 A I think it's the same. I'm not
11 aware that there's a difference.

12 Q I'm going to return to page 22.
13 You reference the amount of
14 certificates in support that Mr. Brown has. How
15 do these things affect your decision making
16 process?

17 A For me it's a favorable -- it
18 affects it favorably when people have done more
19 than the required programs, which are not that
20 many programs that's required of them, and so
21 some people go above and beyond.

22 So in this case I see he got a
23 Bachelor of Science from the Niagara Consortium,
24 it says here he has a lot of certificates, so I
25 would think that's a good thing. Looks like he

1 Agostini
2 had done some work on outside -- outside of the
3 grounds. So those are -- those are good things.
4 Those are favorable considerations.

5 Q Then if we turn to page 25,
6 that's the decision, and Mr. Brown was denied
7 parole.

8 You can read the decision
9 before I ask you about it.

10 (Pause)

11 A Okay, I've read through it.

12 Q So it says that you denied
13 parole because Mr. Brown's release remains
14 incompatible with the welfare of the community,
15 "which still suffers from the lives you stole."

16 Could you explain what you mean
17 by that?

18 A That I think we came to the
19 determination that his release was not
20 compatible with the community where he had
21 committed those offenses, into which he would
22 return.

23 Q And what was the basis for
24 that?

25 A I'm imagining I must have had

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2 some victim impact and community opposition. I
3 don't remember this specific case, but that's
4 what I would think from reading this.

5 And it's two people that he
6 killed, I think at different times, not in
7 one -- in one robbery. In reading this here,
8 I'm thinking this was two different people
9 killed at separate times.

10 Q So would it be fair to say that
11 the denial of parole was because of the nature
12 of the crime?

13 A I think that would be fair to
14 say.

15 Q And did Mr. Brown's age at the
16 time of the offense fit into your decision at
17 all?

18 A I'm sure it did.

19 Q And do you believe that your
20 decision is consistent with your obligations
21 under Hawkins?

22 A Sorry, I scrolled back up to
23 the top, I'm trying to get back to the decision.

24 (Pause)

25 A I think it comports. I could

1 Agostini

2 certainly have added more.

3 Q What is your basis for thinking
4 that it comports with Hawkins, or the
5 requirements of Hawkins?

6 A Because I think that this was
7 discussed during the interview.

8 Q And by "this" you mean his age,
9 youth?

10 A The age and the childhood and
11 the circumstances of his life and that led to
12 the crime.

13 Q It's your understanding that
14 it's sufficient just to, during the interview,
15 consider the hallmarks of youth to be compliant
16 with the Hawkins decision; is that correct?

17 A I think it needs to be in --
18 the consideration for minor offenders needs to
19 be in the interview and in the decision.

20 I don't think the decision
21 needs to go on at great length on it, but it
22 needs to be in there, which I think it is in
23 this case, and I think it's also in the
24 interview, from the little bit I saw here.

25 Q Would you agree with me that

C E R T I F I C A T E

I, HELEN MITCHELL, a Registered
Professional Reporter and Notary Public, do
hereby certify:

I reported the proceedings in the
within-entitled matter, and that the within
transcript is a true record of such proceedings.

I further certify that I am not related, by
blood or marriage, to any of the parties in this
matter and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 12th day of November, 2021.



HELEN MITCHELL, RPR